

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. SJC-242

IN RE PETITION OF )  
HUSSON COLLEGE SCHOOL OF LAW ) ORDER

I. INTRODUCTION

[¶1] For the past several years, Husson College, an institution of higher education in Bangor, has been working on plans to open a law school. Husson has taken the unusual step of asking us to exercise our original jurisdiction to grant its future graduates eligibility to take the Maine State Bar Examination, although the law school has not yet begun operations, the first students will not graduate for more than three years, and the law school will not be accredited by the American Bar Association (ABA) as currently required by the Maine Bar Admission Rules. After a careful review of all materials in the record and statements made at the public hearing, we conclude that we cannot grant Husson's request.

II. FACTS AND PROCEDURE

A. Husson's Proposal

[¶2] Husson asserts that its proposed law school will address the need for lawyers in northern and eastern Maine. Husson plans to provide a relatively low cost legal education and hopes to attract students from the greater Bangor area and

regions north and east of Bangor. Husson would accept qualified applicants, based on its application requirements, with an initial class of twenty students, increasing eventually to twenty-five students per year. As proposed, the law school would be a new school, with its own Dean,<sup>1</sup> that would not be housed in an existing Husson College program.

[¶3] Currently, applicants for the Maine Bar Examination must graduate from an ABA-accredited law school, pursuant to M. Bar Adm. R. 10(c)(2) and 4 M.R.S. § 803(2)(A) (2007). There are certain exceptions to the rule for applicants who have taken and passed other states' bar exams. *See* M. Bar Adm. R. 10(c)(3); 4 M.R.S. § 803(2)(B) (2007). Husson seeks an exception for its law school graduates. In written materials provided to us, Husson asserted that its law school would not initially seek ABA accreditation, due to the high capital investment required, but would strive to implement all ABA standards where appropriate and position itself for future accreditation. At the public hearing, Husson stated that it did not expect to apply for ABA accreditation.

[¶4] Nonetheless, the Husson request offers assurance that the curriculum would emphasize the development of skills as set forth in ABA publications. Husson's proposed curriculum would be a thirty-course, ninety-credit-hour program of law study designed to enable students to pass the Maine State Bar

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<sup>1</sup> The proposed Dean currently serves as the Dean of Husson's Business School.

Examination and thereafter become members of the legal profession. The course of study would emphasize Maine law but would be grounded in general legal doctrine so that the students could eventually practice law outside of Maine. According to Husson, the curriculum it proposes encompasses the ten major areas of practice found to predominate in small New England law firms.

[¶5] Husson proposes that its existing small legal library would be expanded to meet the needs of law students. It plans to have an acquisitions budget of \$20,000 per year, and to focus its acquisitions on Maine legal materials. The students would primarily use online sources such as Westlaw and Lexis.

[¶6] The faculty of the law school would comprise a combination of full-time and adjunct professors. Husson has identified seven individuals who will act as the law school's full-time faculty and/or administrators; six of the seven currently teach in other Husson programs, and the seventh is Husson's general counsel.

#### B. Procedure for Review of the Proposed Law School

[¶7] Maine has no department or commission of higher or post-secondary education. If an educational institution wishes to confer "certain degrees," it must obtain initial authority to do so through an "Act of the Legislature." 20-A M.R.S. § 10704 (2007). If an already-existing institution of higher education wishes to confer additional degrees, it must obtain authorization from the Maine State Board

of Education (MSBE), 20-A M.R.S. §§ 1(36), 10704-A (2007). In order to obtain authorization, the applicant notifies the Commissioner of Education of its intent and prepares a report for review by the Commissioner. 10 C.M.R. 05 071 149-5 § (2)(B)(4) (1999). The Commissioner then creates a review team to review and evaluate the submitted material and to conduct on-site visits when applicable. 10 C.M.R. 05 071 149-5 § (2)(B)(5) (1999).

[¶8] In July 2006, Husson presented its application to the MSBE for authorization to award the degree of Juris Doctor. The team created to review Husson's application included Dr. Barry Mills, President of Bowdoin College; Dr. Jill L. Reich of Bates College; Dr. Lawrence Velvel from the Massachusetts School of Law; and Daniel E. Wathen and Paul L. Rudman, both former Maine Supreme Judicial Court Justices. Because Husson's law school does not currently exist, the review team evaluated the proposal by reviewing Husson's responses to each of the ten degree authorization topics listed in 10 C.M.R. 05 071 149-5 § (2)(B)(4) (1999). The team submitted its report in July 2007.

[¶9] In its report, the team unanimously concluded that Husson's proposal had met all ten of the MSBE's degree authorization standards and, as a result, the team recommended that the MSBE approve Husson's application and permit

Husson to confer the degree of Juris Doctor.<sup>2</sup> Notwithstanding that recommendation, the team included in its report to the Department of Education a caveat discussing the limits of the team's authority. Specifically, many on the team were concerned that the team did not have the authority to evaluate the quality of the plans or the quality of the law school program generally. In the report, the team raised a number of concerns that should be addressed in order to assure a quality law school education.

[¶10] On October 18, 2007, Husson filed a motion and accompanying memorandum requesting that we exercise original jurisdiction to grant future graduates of Husson eligibility to take the Maine Bar Examination. Husson also filed an appendix of materials that included, among other things, the findings of the review team, our 1996 decision allowing graduates of the Massachusetts School of Law (MSL) eligibility to sit for the Maine Bar Examination, and Husson's application to the MSBE for authority to award the Juris Doctor degree. Husson submitted a revised, but virtually identical, appendix on October 30, 2007.

[¶11] On December 20, 2007, Husson submitted a supplemental memorandum in response to our request that it address 4 M.R.S. § 803 (2007). In this memorandum Husson contends that we have the authority, notwithstanding

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<sup>2</sup> The topics addressed by the team were: institutional objectives; organization and governance; academic programs; degree requirements; admission requirements; faculty; student services; library and learning resources; physical facilities; and financial resources. 10 C.M.R. 05 071 149-5 § 2(B)(4)(a)-(j) (1999).

section 803, to regulate the admission of attorneys to the Bar of the State of Maine.<sup>3</sup> On February 20, 2008, Husson submitted a supplemental appendix, which included, among other things, the New England Association of Schools and Colleges (NEASC) Standards of Accreditation. It also submitted its third memorandum, arguing, in short, that Husson’s potential law students deserve to be eligible to sit for the Maine Bar Examination just as graduates of MSL are;<sup>4</sup> that ABA accreditation inhibits the provision of affordable legal education at a smaller law school; and that Husson will provide a quality legal education.

[¶12] In January and February 2008, a number of organizations and individuals submitted briefs concerning Husson’s proposal. Those in favor of the proposal included: the District Attorneys of Piscataquis, Penobscot, Aroostook, Hancock, Washington, Kennebec, and Somerset Counties; the Maine Association of Criminal Defense Lawyers; and L. Scott Gould, a former law professor. Those opposed to the proposal included the Maine State Bar Association, the Maine Trial Lawyers Association, and the Maine Board of Bar Examiners. The Dean of the University of Maine School of Law submitted a brief but took no position, stating

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<sup>3</sup> We agree with Husson on this point. Whatever deference we may give to the legislative intent as revealed through legislation, we retain ultimate authority regarding who will or will not be allowed to sit for the Maine State Bar Examination. *See In re Application of Feingold*, 296 A.2d 492, 496 (Me. 1972) (providing that this Court has inherent authority and exclusive jurisdiction over admission of attorneys in the state and that the Legislature “can in no way limit this inherent power and authority”).

<sup>4</sup> Only those Massachusetts School of Law graduates who have already passed the Massachusetts Bar Examination are eligible to sit for the Maine Bar Examination.

simply that the school has been well-served by the ABA and the ABA's administration of accreditation standards for law schools.<sup>5</sup>

[¶13] A public hearing was held in Bangor on February 29, 2008. At the hearing, we heard from Husson, from the Board of Bar Examiners, and from interested parties and individuals. After the hearing, Husson filed a motion to supplement the record as well as an additional packet of materials containing a letter from Husson's President, William H. Beardsley, and the resumes of the proposed faculty members. On March 13, 2008, we received the Maine Board of Bar Examiners's response to Husson's motion. We have considered all of the arguments and submissions received.

### III. DISCUSSION

[¶14] The benefits associated with having a law school serving central and northern Maine have not been challenged in this proceeding. Having more well-trained and educated lawyers in all parts of the state could improve access to justice for all. However, the need for such well-trained and educated lawyers does not permit us to avoid taking a methodical and careful look at Husson's proposal. At this point in the development of Husson's proposal, there are three primary impediments that preclude our granting Husson's request.

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<sup>5</sup> Although we carefully considered every brief in this matter, we do not here repeat the arguments made in those briefs.

#### A. Operation of the Law School

[¶15] First, Husson has not yet opened the doors of its proposed law school. Although we recognize the economic challenge of opening a law school, and the benefits to Husson of obtaining pre-approval for its students to sit for the Maine Bar Examination, the lack of experience and track record leaves us without sufficient information to take the action requested. Husson points to no other law school in the country that has chosen not to seek ABA accreditation and yet has received authorization for its students to take the bar exam before establishing the school, fine tuning the program, and assuring a quality legal education.

#### B. Follow-up on Evaluators' Concerns

[¶16] Husson acknowledges that the evaluators raised a number of concerns. Because of the timing of Husson's request to us, Husson had not, at the point of the public hearing, taken steps to address those concerns.

[¶17] The team members raised several important issues that would need to be addressed as the law school is created. They indicated that, had the team been requested to evaluate the *quality* of the proposed program, many on the team might have reached a different conclusion on the suitability of Husson's plans for a law school. The report itself listed three areas of concern shared by most members of the team: first, the adequacy of Husson's proposed system for evaluating student performance; second, Husson's reliance on electronic resources and research; and



finally, qualification and experience of the faculty and leadership of the law school.<sup>6</sup> While admiring the talent and expertise of the proposed faculty, members of the team believed that, in most law schools, these individuals would serve only to complement a core group of trained law professors committed to and experienced in legal education. They noted that “the basic research skills and analysis integral to becoming a good lawyer must be taught by experienced legal researchers who understand the research models of law and the pedagogy of legal research.”<sup>7</sup> Husson’s responses to these concerns will be of great assistance to us, in the future, in determining whether to grant a subsequent request.

### C. ABA Accreditation

[¶18] Finally, we address the absence of ABA accreditation. Husson argues that its law school should be able to operate without ABA accreditation. Husson asserts that future accreditation by NEASC will be sufficient to ensure that its law school is of sufficient quality and that ABA accreditation is not necessary for

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<sup>6</sup> Former Associate Justice Rudman shared none of the three concerns. Dr. Velvel shared only the third concern.

<sup>7</sup> The team’s report includes the following:

These team members believe that the pedagogy of legal education is different than the education of legal principles in business schools, criminal justice programs and other schools. And, although practicing attorneys can be good teachers, the core of legal education is a faculty committed to teaching law in a law school environment who are experienced in the modalities of law school education. The application does not recognize or address these concerns adequately and some team members have serious concerns about the quality of the education for these reasons.

assuring quality legal education. We find, however, that current NEASC requirements are not adequate to ensure a minimum standard of quality for *legal* education.<sup>8</sup> Meeting the NEASC standards may be necessary for a law school, but it is not sufficient. We agree with the point made in the review team’s report: “[T]he pedagogy of legal education is different from [educations of other types].” An accrediting body that will provide sufficient oversight must acknowledge and recognize that distinction.

[¶19] Husson has not yet identified or proposed a law-school-specific alternative to ABA accreditation. To be clear, we do not intend by this Order to establish ABA accreditation as the only acceptable review process. On the record before us, however, there is no evidence that an appropriate alternative has been identified.

[¶20] We also distinguish Husson’s request from that of the Massachusetts School of Law. In 1996, we granted MSL’s petition to allow its graduates who had passed the Massachusetts Bar Examination eligibility to sit for the Maine State Bar Examination, despite MSL’s lack of ABA accreditation. At the time of its petition, MSL had been operating for eight years and had been accredited by the

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<sup>8</sup> Husson has provided us with a list of post-secondary institutions in Maine and Massachusetts that are members of NEASC. This list includes, among many others, Bates College, Central Maine Community College, Maine College of Art, Andover Newton Theological School, and The Boston Conservatory.

Massachusetts Board of Regents of Higher Education<sup>9</sup> after that Board reviewed the quality of the legal program MSL offered. Because the review process occurred *after MSL had opened its doors*, the reviewing committee was able to consider issues similar to those flagged by the team reviewing the Husson proposal, i.e., the level and quality of instruction, the quality of full-time faculty, the size and depth of the library collection, and the qualifications of the law librarian.

[¶21] Currently, there is no state accrediting body in Maine comparable to the Massachusetts body that accredited MSL. The review undertaken by the MSBE was not designed to, and did not, consider the quality of the education Husson plans to offer. The review team noted the limits of the MSBE review and explicitly expressed its concerns about the quality of Husson's proposed law school. Although some issues could be corrected before the program opens its doors, others identified by the review team may be properly addressed only after the law school has accepted and begun teaching its first class of students.

#### IV. CONCLUSION

[¶22] Husson's proposal to open a law school to serve central and northern Maine represents a laudable goal. Unfortunately, the request has come to us before Husson has had the opportunity to respond to the reviewing team's concerns, to

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<sup>9</sup> The Board of Regents has since been replaced by the Board of Higher Education.

identify an accreditation process specific to legal education, or to establish a baseline of legal education at Husson. We must, therefore, deny the request without prejudice.

Dated: June 3, 2008

FOR THE COURT,

/s/  
Leigh I. Saufley, Chief Justice

/s/  
Robert W. Clifford, Associate Justice

/s/  
Jon D. Levy, Associate Justice

/s/  
Warren M. Silver, Associate Justice

/s/  
Ellen A. Gorman, Associate Justice